THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.25652 OF 2007

BETWEEN:

Shailendrakumar Sahbu son of Rajendraprasad Sahu and others

.,.Petitioners

Vs.

The Government of Andhra Pradesh, rep. by its Principal Secretary, Municipal Administration and Urban Development, Secretariat, Hyderabad and others

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.25652 OF 2007

ORAL ORDER

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The writ petition is filed on an apprehension that the respondents, in particular the 2nd respondent and his officials would demolish the structures in the flats belonging to the petitioner in Baig Hardev, Hill View Residency, Rakshitha Residency, Kakarlas Livewell Apartments, Crescent Majestic, Saijyothi Palace, and Aditya Admire building complexes, within Malkajgiri Municipal limits, Secunderabad, on the ground that the constructions are in deviance of the approved building permissions, in respect of the flats therein.

As the Greater Hyderabad Municipal Corporation was perceived to have persistently abdicated its statutory obligation under the provisions of the Hyderabad Municipal Corporation Act,1955 in effectuating the provisions of the Act and the regulatory obligations there under and failed to take action for demolition of wholly unauthorized or grossly deviant constructions, at the interest of a probono publico, a Division Bench of this Court by the order dated.20-08-2007 in W.P.No.879 of 2005 ordered as under:-

" Shri O.Yella Reddy, petitioner in person.

Government Pleader for Municipal Administration for Respondent No.1.

Shri P.Radhakrishna for Malkajgiri Municipality (now part of Greater Hyderabad Municipal Corporation)

Learned Government Pleader invited our attention to the report submitted by Director, Town and Country Planning (two volumes). He gave out that departmental proceedings have been initiated against Sarvasri B.Ramesh Babu, N.Jeevan Rao (now retired), K.Siva Parvathi, B.Sambasiva Rao and D.John Samson during whose tenure massive

illegal constructions were made within the area of Malkajgiri Municipality. According to the learned Government Pleader, proceedings have been initiated against the serving officers under Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

Shri O.Yella Reddy invited our attention to the reports and submitted that massive violation of the sanctioned plans could not have been possible but for the active connivance with the officers of the municipality. He also made a suggestive submission that such illegal constructions must have been made with the active connivance and corrupt motive of the officers concerned.

For the present, we do not want to make any comment on the submission made by Shri O.Yella Reddy and deem it proper to adjourn the case by six weeks with the direction that notices be issued to Shri B.Ramesh Babu, Additional Commissioner, Greater Hyderabad Municipal Corporation; Smt. K.Siva Parvathi, Additional Commissioner, Greater Hyderabad Municipal Corporation; Shri B.Sambasiva Rao, Executive Engineer, Malkajgiri Municipality; Shri D.John Samson, Deputy Commissioner, Malkajgiri Circle, Greater Hyderabad Municipal Corporation and Shri N.Jeevan Rao, D.E.E (retired), resident of Plot No. 328, H.No. 37-2/11, Defence Colony, Near Reservoir, Malkajgiri, Ranga Reddy District to show cause as to why the Court may not pass an order for their prosecution for having acted with malus animus in allowing wide spread illegal and unauthorized constructions within the limits of erstwhile Malkajgiri Municipality and thereby destroyed the concept of planned development of the municipal area. The notices be issued to the five officers for 09-10-2007.

The competent authority of the Greater Hyderabad Municipal Corporation, Malkajgiri Circle and/or any other authorized officer shall be free to take action against the illegal/unauthorized constructions. In order to obviate further litigation in the matter, we deem it proper to direct that if the competent authority decides to take action against the illegal/unauthorized constructions, then it must give an action oriented notice to the owner and/or occupier, give reasonable opportunity of

two to three weeks to file reply along with documents and then pass a reasoned order."

As is apparent, the Division Bench sensitized the 2nd respondent of its statutory obligation to take action against illegal and unauthorized constructions clearly directing if the competent authority decides to take action against illegal or unauthorized constructions, it must given action oriented notice to the owner or occupier, give a reasonable opportunity of two or three weeks to file a reply along with documents in support of any defence and then pass a reasoned order.

The petitioners allege to have received no notices proposing demolition of any unauthorized constructions and assert that in the neighborhood large scale demolitions are taking place without following the due process of law and without issuance of notices either under Section.452 or 636 of the Act. Apprehending similar unlawful conduct by the respondents and in particular the 2nd respondent the petitioners have filed this writ petition seeking insulation from such potential unlawful conduct.

Sri Ranga Reddy, the learned Standing Counsel for the 2nd respondent does not contest the legal position that the 2nd respondent cannot take action even against unlawful or unauthorized constructions without following the procedure either under Section.452 or 636 of the Act. In fact the order of the Division Bench of this Court extracted supra itself reiterates this statutory position as a generic principle.

In the circumstances the writ petition is disposed of directing the 2nd respondent not to take action for demolition of the deviant structures in the possession and occupation of the petitioners without following the procedure mandated by the provisions of the Act either under Sectiofn.452 or 636 of the Act. In the circumstances no order as to costs.

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GODA RAGHURAM,J

30TH NOVEMBER 2007

Note:

Issue CC

As soon as

Possible
(B/O)
PVSN/TSNR